

**FDIC PREMIUM DEDUCTION AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Corporate Franchise and Income Taxes code and the Individual Income Tax Act by amending provisions relating to certain subtractions from unadjusted income or adjusted gross income.

**Highlighted Provisions:**

This bill:

- ▶ enacts a provision that authorizes a subtraction from unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-106**, as last amended by Laws of Utah 2017, Chapter 389

**59-10-114**, as last amended by Laws of Utah 2018, Chapters 190 and 370

**59-10-202**, as last amended by Laws of Utah 2018, Chapter 190

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-7-106** is amended to read:

**59-7-106. Subtractions from unadjusted income.**

(1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:

- 33 (a) the foreign dividend gross-up included in gross income for federal income tax  
34 purposes under Section 78, Internal Revenue Code;
- 35 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the  
36 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the  
37 taxable year for which the net capital loss is incurred;
- 38 (c) the decrease in salary expense deduction for federal income tax purposes due to  
39 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;
- 40 (d) the decrease in qualified research and basic research expense deduction for federal  
41 income tax purposes due to claiming the federal credit for increasing research activities under  
42 Section 41, Internal Revenue Code;
- 43 (e) the decrease in qualified clinical testing expense deduction for federal income tax  
44 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for  
45 rare diseases or conditions under Section 45C, Internal Revenue Code;
- 46 (f) any decrease in any expense deduction for federal income tax purposes due to  
47 claiming any other federal credit;
- 48 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and  
49 (2)(b);
- 50 (h) any income on the federal corporation income tax return that has been previously  
51 taxed by Utah;
- 52 (i) an amount included in federal taxable income that is due to a refund of a tax,  
53 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation  
54 tax:
- 55 (i) if that tax is imposed for the privilege of:  
56 (A) doing business; or  
57 (B) exercising a corporate franchise;
- 58 (ii) if that tax is paid by the corporation to:  
59 (A) Utah;  
60 (B) another state of the United States;  
61 (C) a foreign country;  
62 (D) a United States possession; or  
63 (E) the Commonwealth of Puerto Rico; and

64 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

65 (j) a charitable contribution, to the extent the charitable contribution is allowed as a  
66 subtraction under Section 59-7-109;

67 (k) subject to Subsection (3), 50% of a dividend considered to be received or received  
68 from a subsidiary that:

69 (i) is a member of the unitary group;

70 (ii) is organized or incorporated outside of the United States; and

71 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

72 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a  
73 foreign operating company;

74 (m) the amount of gain or loss that is included in unadjusted income but not recognized  
75 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as  
76 defined in Section 338, Internal Revenue Code, if an election has been made in accordance  
77 with Section 338(h)(10), Internal Revenue Code;

78 (n) the amount of gain or loss that is included in unadjusted income but not recognized  
79 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance  
80 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal  
81 Revenue Code, has been made for federal purposes;

82 (o) subject to Subsection (5), an adjustment to the following due to a difference  
83 between basis for federal purposes and basis as computed under Section 59-7-107:

84 (i) an amortization expense;

85 (ii) a depreciation expense;

86 (iii) a gain;

87 (iv) a loss; or

88 (v) an item similar to Subsections (1)(o)(i) through (iv);

89 (p) an interest expense that is not deducted on a federal corporation income tax return  
90 under Section 265(b) or 291(e), Internal Revenue Code;

91 (q) 100% of dividends received from a subsidiary that is an insurance company if that  
92 subsidiary that is an insurance company is:

93 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and

94 (ii) under common ownership;

95 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as  
96 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section  
97 53B-8a-102.5:

98 (i) that the corporation or a person other than the corporation makes into an account  
99 owned by the corporation during the taxable year;

100 (ii) to the extent that neither the corporation nor the person other than the corporation  
101 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax  
102 return; and

103 (iii) to the extent the qualified investment does not exceed the maximum amount of the  
104 qualified investment that may be subtracted from unadjusted income for a taxable year in  
105 accordance with Subsection 53B-8a-106(1);

106 (s) for a corporation that makes a donation, as that term is defined in Section  
107 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the  
108 amount of the donation to the extent that the corporation did not deduct the donation on a  
109 federal income tax return;

110 (t) for purposes of income included in a combined report under Part 4, Combined  
111 Reporting, the entire amount of the dividends a member of a unitary group receives or is  
112 considered to receive from a captive real estate investment trust; [~~and~~]

113 (u) the increase in income for federal income tax purposes due to claiming a:

114 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

115 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code[-]; and

116 (v) the amount of any FDIC premium paid or incurred by the taxpayer that is  
117 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal  
118 Revenue Code.

119 (2) For purposes of Subsection (1)(b):

120 (a) the subtraction shall be made by claiming the subtraction on a return filed:

121 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

122 (ii) by the due date of the return, including extensions; and

123 (b) a net capital loss for a taxable year shall be:

124 (i) subtracted for the taxable year for which the net capital loss is incurred; or

125 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

126 Code.

127 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a  
128 taxpayer shall first subtract from a dividend considered to be received or received an expense  
129 directly attributable to that dividend.

130 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is  
131 considered to be directly attributable to a dividend is calculated by multiplying the interest  
132 expense by a fraction:

133 (i) the numerator of which is the taxpayer's average investment in the dividend paying  
134 subsidiaries; and

135 (ii) the denominator of which is the taxpayer's average total investment in assets.

136 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in  
137 determining income apportionable to this state, a portion of the factors of a foreign subsidiary  
138 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the  
139 combined report factors as provided in this Subsection (3)(c).

140 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign  
141 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be  
142 included in the combined report factors is calculated by multiplying each factor of the foreign  
143 subsidiary by a fraction:

144 (A) not to exceed 100%; and

145 (B) (I) the numerator of which is the amount of the dividend paid by the foreign  
146 subsidiary that is included in adjusted income; and

147 (II) the denominator of which is the current year earnings and profits of the foreign  
148 subsidiary as determined under the Internal Revenue Code.

149 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under  
150 Subsection (1)(l):

151 (i) if the taxpayer elects to file a worldwide combined report as provided in Section  
152 59-7-403; or

153 (ii) for the following:

154 (A) income generated from intangible property; or

155 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
156 generated from an asset held for investment and not from a regular business trading activity.

157 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating  
158 company:

159 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

160 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a  
161 transaction that occurs between members of a unitary group.

162 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining  
163 income apportionable to this state, the factors for a foreign operating company shall be  
164 included in the combined report factors in the same percentages as the foreign operating  
165 company's adjusted income is included in the combined adjusted income.

166 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
167 commission may by rule define what constitutes:

168 (i) income generated from intangible property; or

169 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
170 generated from an asset held for investment and not from a regular business trading activity.

171 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of  
172 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax  
173 credit is claimed if:

174 (i) there is a reduction in federal basis for a federal tax credit; and

175 (ii) there is no corresponding tax credit allowed in this state.

176 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
177 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)  
178 through (iv).

179 Section 2. Section **59-10-114** is amended to read:

180 **59-10-114. Additions to and subtractions from adjusted gross income of an**  
181 **individual.**

182 (1) There shall be added to adjusted gross income of a resident or nonresident  
183 individual:

184 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income  
185 on the taxpayer's federal individual income tax return for the taxable year;

186 (b) the amount of a child's income calculated under Subsection (4) that:

187 (i) a parent elects to report on the parent's federal individual income tax return for the

188 taxable year; and

189 (ii) the parent does not include in adjusted gross income on the parent's federal  
190 individual income tax return for the taxable year;

191 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for  
192 the taxable year if:

193 (A) the resident or nonresident individual does not deduct the amounts on the resident  
194 or nonresident individual's federal individual income tax return under Section 220, Internal  
195 Revenue Code;

196 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

197 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a  
198 return the resident or nonresident individual files under this chapter;

199 (ii) a disbursement required to be added to adjusted gross income in accordance with  
200 Subsection 31A-32a-105(3); or

201 (iii) an amount required to be added to adjusted gross income in accordance with  
202 Subsection 31A-32a-105(5)(c);

203 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
204 from the account of a resident or nonresident individual who is an account owner as defined in  
205 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
206 withdrawn from the account of the resident or nonresident individual who is the account  
207 owner:

208 (i) is not expended for:

209 (A) higher education costs as defined in Section 53B-8a-102.5; or

210 (B) a payment or distribution that qualifies as an exception to the additional tax for  
211 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
212 Internal Revenue Code; and

213 (ii) is:

214 (A) subtracted by the resident or nonresident individual:

215 (I) who is the account owner; and

216 (II) on the resident or nonresident individual's return filed under this chapter for a  
217 taxable year beginning on or before December 31, 2007; or

218 (B) used as the basis for the resident or nonresident individual who is the account

219 owner to claim a tax credit under Section 59-10-1017;

220 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of  
221 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
222 evidences of indebtedness:

223 (i) issued by one or more of the following entities:

224 (A) a state other than this state;

225 (B) the District of Columbia;

226 (C) a political subdivision of a state other than this state; or

227 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)  
228 through (C); and

229 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's  
230 federal income tax return for the taxable year;

231 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a  
232 resident trust of income that was taxed at the trust level for federal tax purposes, but was  
233 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

234 (g) any distribution received by a resident beneficiary of a nonresident trust of  
235 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
236 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
237 was not taxed at the trust level by any state, with undistributed distributable net income  
238 considered to be distributed from the most recently accumulated undistributed distributable net  
239 income; and

240 (h) any adoption expense:

241 (i) for which a resident or nonresident individual receives reimbursement from another  
242 person; and

243 (ii) to the extent to which the resident or nonresident individual subtracts that adoption  
244 expense:

245 (A) on a return filed under this chapter for a taxable year beginning on or before  
246 December 31, 2007; or

247 (B) from federal taxable income on a federal individual income tax return.

248 (2) There shall be subtracted from adjusted gross income of a resident or nonresident  
249 individual:

250 (a) the difference between:

251 (i) the interest or a dividend on an obligation or security of the United States or an  
252 authority, commission, instrumentality, or possession of the United States, to the extent that  
253 interest or dividend is:

254 (A) included in adjusted gross income for federal income tax purposes for the taxable  
255 year; and

256 (B) exempt from state income taxes under the laws of the United States; and

257 (ii) any interest on indebtedness incurred or continued to purchase or carry the  
258 obligation or security described in Subsection (2)(a)(i);

259 (b) for taxable years beginning on or after January 1, 2000, if the conditions of  
260 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

261 (i) during a time period that the Ute tribal member resides on homesteaded land  
262 diminished from the Uintah and Ouray Reservation; and

263 (ii) from a source within the Uintah and Ouray Reservation;

264 (c) an amount received by a resident or nonresident individual or distribution received  
265 by a resident or nonresident beneficiary of a resident trust:

266 (i) if that amount or distribution constitutes a refund of taxes imposed by:

267 (A) a state; or

268 (B) the District of Columbia; and

269 (ii) to the extent that amount or distribution is included in adjusted gross income for  
270 that taxable year on the federal individual income tax return of the resident or nonresident  
271 individual or resident or nonresident beneficiary of a resident trust;

272 (d) the amount of a railroad retirement benefit:

273 (i) paid:

274 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et  
275 seq.;

276 (B) to a resident or nonresident individual; and

277 (C) for the taxable year; and

278 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on  
279 that resident or nonresident individual's federal individual income tax return for that taxable  
280 year;

- 281 (e) an amount:
- 282 (i) received by an enrolled member of an American Indian tribe; and
- 283 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 284 part on that amount in accordance with:
- 285 (A) federal law;
- 286 (B) a treaty; or
- 287 (C) a final decision issued by a court of competent jurisdiction;
- 288 (f) an amount received:
- 289 (i) for the interest on a bond, note, or other obligation issued by an entity for which
- 290 state statute provides an exemption of interest on its bonds from state individual income tax;
- 291 (ii) by a resident or nonresident individual;
- 292 (iii) for the taxable year; and
- 293 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
- 294 federal income tax return for the taxable year; ~~and~~
- 295 (g) the amount of all income, including income apportioned to another state, of a
- 296 nonmilitary spouse of an active duty military member if:
- 297 (i) both the nonmilitary spouse and the active duty military member are nonresident
- 298 individuals;
- 299 (ii) the active duty military member is stationed in Utah;
- 300 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
- 301 4001(a)(2); and
- 302 (iv) the income is included in adjusted gross income for federal income tax purposes
- 303 for the taxable year[-]; and
- 304 (h) the amount of any FDIC premium paid or incurred by the taxpayer that is
- 305 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
- 306 Revenue Code.
- 307 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
- 308 (i) the taxpayer is a Ute tribal member; and
- 309 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 310 requirements of this Subsection (3).
- 311 (b) The agreement described in Subsection (3)(a):

- 312 (i) may not:
- 313 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 314 (B) provide a subtraction under this section greater than or different from the
- 315 subtraction described in Subsection (2)(b); or
- 316 (C) affect the power of the state to establish rates of taxation; and
- 317 (ii) shall:
- 318 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 319 (B) be in writing;
- 320 (C) be signed by:
- 321 (I) the governor; and
- 322 (II) the chair of the Business Committee of the Ute tribe;
- 323 (D) be conditioned on obtaining any approval required by federal law; and
- 324 (E) state the effective date of the agreement.
- 325 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 326 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
- 327 in effect.
- 328 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
- 329 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
- 330 after the January 1 following the termination of the agreement.
- 331 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
- 332 Utah Administrative Rulemaking Act, the commission may make rules:
- 333 (i) for determining whether income is derived from a source within the Uintah and
- 334 Ouray Reservation; and
- 335 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 336 sources is determined under Section 59-10-117.
- 337 (4) (a) For purposes of this Subsection (4), "Form 8814" means:
- 338 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
- 339 Interest and Dividends; or
- 340 (ii) (A) a form designated by the commission in accordance with Subsection
- 341 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
- 342 individual income taxes the information contained on 2000 Form 8814 is reported on a form

343 other than Form 8814; and

344 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter  
345 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as  
346 being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
347 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
348 8814.

349 (b) The amount of a child's income added to adjusted gross income under Subsection  
350 (1)(b) is equal to the difference between:

351 (i) the lesser of:

352 (A) the base amount specified on Form 8814; and

353 (B) the sum of the following reported on Form 8814:

354 (I) the child's taxable interest;

355 (II) the child's ordinary dividends; and

356 (III) the child's capital gain distributions; and

357 (ii) the amount not taxed that is specified on Form 8814.

358 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences  
359 of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not  
360 be added to adjusted gross income of a resident or nonresident individual if, as annually  
361 determined by the commission:

362 (a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the  
363 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
364 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

365 (b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not  
366 impose a tax based on income on any part of the bonds, notes, and other evidences of  
367 indebtedness of this state:

368 (i) the entity; or

369 (ii) (A) the state in which the entity is located; or

370 (B) the District of Columbia, if the entity is located within the District of Columbia.

371 Section 3. Section **59-10-202** is amended to read:

372 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**  
373 **nonresident estate or trust.**

374 (1) There shall be added to unadjusted income of a resident or nonresident estate or  
375 trust:

376 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal  
377 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
378 determining adjusted gross income;

379 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of  
380 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
381 evidences of indebtedness:

382 (i) issued by one or more of the following entities:

383 (A) a state other than this state;

384 (B) the District of Columbia;

385 (C) a political subdivision of a state other than this state; or

386 (D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A)

387 through (C); and

388 (ii) to the extent the interest is not included in federal taxable income on the taxpayer's  
389 federal income tax return for the taxable year;

390 (c) any portion of federal taxable income for a taxable year if that federal taxable  
391 income is derived from stock:

392 (i) in an S corporation; and

393 (ii) that is held by an electing small business trust;

394 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
395 from the account of a resident or nonresident estate or trust that is an account owner as defined  
396 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
397 withdrawn from the account of the resident or nonresident estate or trust that is the account  
398 owner:

399 (i) is not expended for:

400 (A) higher education costs as defined in Section 53B-8a-102.5; or

401 (B) a payment or distribution that qualifies as an exception to the additional tax for  
402 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

403 Internal Revenue Code; and

404 (ii) is:

405 (A) subtracted by the resident or nonresident estate or trust:  
406 (I) that is the account owner; and  
407 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a  
408 taxable year beginning on or before December 31, 2007; or  
409 (B) used as the basis for the resident or nonresident estate or trust that is the account  
410 owner to claim a tax credit under Section 59-10-1017; and  
411 (e) any fiduciary adjustments required by Section 59-10-210.

412 (2) There shall be subtracted from unadjusted income of a resident or nonresident  
413 estate or trust:

414 (a) the interest or a dividend on obligations or securities of the United States and its  
415 possessions or of any authority, commission, or instrumentality of the United States, to the  
416 extent that interest or dividend is included in gross income for federal income tax purposes for  
417 the taxable year but exempt from state income taxes under the laws of the United States, but  
418 the amount subtracted under this Subsection (2) shall be reduced by any interest on  
419 indebtedness incurred or continued to purchase or carry the obligations or securities described  
420 in this Subsection (2), and by any expenses incurred in the production of interest or dividend  
421 income described in this Subsection (2) to the extent that such expenses, including amortizable  
422 bond premiums, are deductible in determining federal taxable income;

423 (b) income of an irrevocable resident trust if:

424 (i) the income would not be treated as state taxable income derived from Utah sources  
425 under Section 59-10-204 if received by a nonresident trust;

426 (ii) the trust first became a resident trust on or after January 1, 2004;

427 (iii) no assets of the trust were held, at any time after January 1, 2003, in another  
428 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

429 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

430 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the  
431 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,  
432 Subchapter J, Subpart E of the Internal Revenue Code; and

433 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on  
434 indebtedness incurred or continued to purchase or carry the assets generating the income  
435 described in this Subsection (2)(b), and by any expenses incurred in the production of income

436 described in this Subsection (2)(b), to the extent that those expenses, including amortizable  
437 bond premiums, are deductible in determining federal taxable income;

438 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or  
439 nonresident estate or trust derived from a deceased Ute tribal member:

440 (i) during a time period that the Ute tribal member resided on homesteaded land  
441 diminished from the Uintah and Ouray Reservation; and

442 (ii) from a source within the Uintah and Ouray Reservation;

443 (d) any amount:

444 (i) received by a resident or nonresident estate or trust;

445 (ii) that constitutes a refund of taxes imposed by:

446 (A) a state; or

447 (B) the District of Columbia; and

448 (iii) to the extent that amount is included in total income on that resident or nonresident  
449 estate's or trust's federal tax return for estates and trusts for that taxable year;

450 (e) the amount of a railroad retirement benefit:

451 (i) paid:

452 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et  
453 seq.;

454 (B) to a resident or nonresident estate or trust derived from a deceased resident or  
455 nonresident individual; and

456 (C) for the taxable year; and

457 (ii) to the extent that railroad retirement benefit is included in total income on that  
458 resident or nonresident estate's or trust's federal tax return for estates and trusts;

459 (f) an amount:

460 (i) received by a resident or nonresident estate or trust if that amount is derived from a  
461 deceased enrolled member of an American Indian tribe; and

462 (ii) to the extent that the state is not authorized or permitted to impose a tax under this  
463 part on that amount in accordance with:

464 (A) federal law;

465 (B) a treaty; or

466 (C) a final decision issued by a court of competent jurisdiction;

467 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section  
468 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the  
469 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for  
470 the taxable year;

471 (h) any fiduciary adjustments required by Section 59-10-210; ~~and~~

472 (i) an amount received:

473 (i) for the interest on a bond, note, or other obligation issued by an entity for which  
474 state statute provides an exemption of interest on its bonds from state individual income tax;

475 (ii) by a resident or nonresident estate or trust;

476 (iii) for the taxable year; and

477 (iv) to the extent the amount is included in federal taxable income on the taxpayer's  
478 federal income tax return for the taxable year~~[-]; and~~

479 (j) the amount of any FDIC premium paid or incurred by the resident or nonresident  
480 estate or trust that is disallowed as a deduction for federal income tax purposes under Section  
481 162(r), Internal Revenue Code.

482 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences  
483 of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may not  
484 be added to unadjusted income of a resident or nonresident estate or trust if, as annually  
485 determined by the commission:

486 (a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the  
487 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
488 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

489 (b) for an entity described in Subsection (1)(b)(i)(C) or (D), the following do not  
490 impose a tax based on income on any part of the bonds, notes, and other evidences of  
491 indebtedness of this state:

492 (i) the entity; or

493 (ii) (A) the state in which the entity is located; or

494 (B) the District of Columbia, if the entity is located within the District of Columbia.

495 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

496 (i) the income is derived from a deceased Ute tribal member; and

497 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

498 requirements of this Subsection (4).

499 (b) The agreement described in Subsection (4)(a):

500 (i) may not:

501 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

502 (B) provide a subtraction under this section greater than or different from the

503 subtraction described in Subsection (2)(c); or

504 (C) affect the power of the state to establish rates of taxation; and

505 (ii) shall:

506 (A) provide for the implementation of the subtraction described in Subsection (2)(c);

507 (B) be in writing;

508 (C) be signed by:

509 (I) the governor; and

510 (II) the chair of the Business Committee of the Ute tribe;

511 (D) be conditioned on obtaining any approval required by federal law; and

512 (E) state the effective date of the agreement.

513 (c) (i) The governor shall report to the commission by no later than February 1 of each  
514 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is  
515 in effect.

516 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
517 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or  
518 after the January 1 following the termination of the agreement.

519 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,  
520 Utah Administrative Rulemaking Act, the commission may make rules:

521 (i) for determining whether income is derived from a source within the Uintah and  
522 Ouray Reservation; and

523 (ii) that are substantially similar to how adjusted gross income derived from Utah  
524 sources is determined under Section 59-10-117.

525 Section 4. **Retrospective operation.**

526 This bill has retrospective operation for a taxable year beginning on or after January 1,

527 2019.